

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

JAN 17 2008

COURT OF APPEALS  
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

JONATHAN DURRELL GALLOWAY,

Appellant.

2 CA-CR 2006-0329

DEPARTMENT B

MEMORANDUM DECISION

Not for Publication

Rule 111, Rules of  
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20054677

Honorable Michael Cruikshank, Judge

AFFIRMED

Thomas F. Jacobs

Tucson  
Attorney for Appellant

V Á S Q U E Z, Judge.

¶1 After a jury trial, appellant Jonathan Galloway was convicted of first-degree burglary, a dangerous nature offense; three counts each of aggravated assault with a deadly weapon/dangerous instrument, armed robbery, and kidnapping, also dangerous nature

offenses; and aggravated robbery.<sup>1</sup> The trial court sentenced him to mitigated, concurrent terms of imprisonment, the longest of which is seven years.

¶2 Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), avowing he has reviewed the entire record but has found no arguable legal issues to raise on appeal. In compliance with *Clark*, counsel has provided “a detailed factual and procedural history of the case with citations to the record, [so] this court can satisfy itself that counsel has in fact thoroughly reviewed the record.” 196 Ariz. 530, ¶ 32, 2 P.3d at 96. Galloway has not filed a supplemental brief.

¶3 On appeal, we view the evidence in the light most favorable to upholding the verdicts. *See State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999). We are satisfied that the record supports counsel’s recitation of the facts and find no error warranting reversal of Galloway’s convictions.

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<sup>1</sup>Although the trial court’s sentencing minute entry suggests Galloway was convicted of burglary in the first degree pursuant to A.R.S. § 13-1507, this offense is actually defined in A.R.S. § 13-1508, as properly alleged in Galloway’s indictment. Additionally, the minute entry mistakenly identifies the burglary and the three kidnapping counts as “non-dangerous” offenses. The jury’s verdict forms and the transcript from Galloway’s sentencing hearing clearly establish that Galloway’s convictions on these charges included findings that they were “of a dangerous nature,” and the sentences imposed are consistent with those authorized for dangerous nature offenses. *See* A.R.S. § 13-604(I). “When there is a discrepancy between the oral sentence and the written judgment” that may be resolved by reference to the record, “the oral pronouncement of sentence controls.” *State v. Hanson*, 138 Ariz. 296, 304-05, 674 P.2d 850, 858-59 (App. 1983). Accordingly, no remand is required to correct this discrepancy.

¶4 At trial, witnesses Christopher D., Nicole P., and Theresa R., testified that on the evening of November 14, 2005, Christopher had been visiting Nicole, his sister, and her roommate, Theresa, at their apartment when he heard a knock on the door. When he answered the door, he recognized Galloway, who lived in the same apartment complex, standing outside. Galloway pointed a gun at Christopher's throat, and a masked man who had been standing behind Galloway put a gun to Christopher's stomach. Galloway and his companion then backed Christopher into the apartment and pushed him onto a couch, told Theresa and Nicole to sit down, and demanded money and valuables. While in the apartment, Galloway had pointed his gun toward Theresa and Nicole while his companion held a gun to Christopher's head. Christopher told the men all the money they had—ninety dollars the three had pooled together—was on the counter. Galloway took the money, Nicole's camera, and cigarettes from her purse, and he and the other man left the apartment.

¶5 The three eyewitnesses had not been certain the gun Galloway was holding was real. Nicole and Theresa had had little experience with firearms, and Christopher's opportunity to observe the men's weapons had been limited. Nicole also testified that, although she had thought Galloway's gun "kind of looked fake" because it was "kind of dull looking," she had definitely had the impression that the other man's weapon was real. Nicole, Theresa, and Christopher all testified they feared what might happen when they were held at gunpoint.

¶6 Galloway had been apprehended the following day, but as Marana Police Department investigator Debra Kesterson was about to speak with him, he had an epileptic seizure and was transported to a hospital for medical care. Several hours later, Kesterson, having been informed that Galloway was ready to be discharged, went to the hospital, informed Galloway of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), and questioned him about the incident the night before.

¶7 During the audio-taped interrogation, Galloway first denied, and then admitted, that he and another man had gone to the apartment occupied by Theresa, Nicole, and Christopher on November 14, 2005, intending to rob them, and further told Kesterson the other man had threatened to shoot him if he did not participate in the robbery. When asked what he had in his hand when Christopher had answered the door, Galloway answered, “I had a .45.” Kesterson then confirmed, “a 45-caliber handgun?”; Galloway responded, “Yes.”<sup>2</sup>

¶8 In addition to being charged as a principal offender, Galloway was charged, and the jury was instructed, on the theory of accomplice culpability under A.R.S. § 13-303.

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<sup>2</sup>Galloway did not move to suppress admission of the tape and relied on the interview to support his defense that he had acted under duress. *See* Ariz. R. Crim. P. 16.2(b) (state’s burden of proof to establish admissibility of confession arises only after defendant moves for its suppression). The jury was instructed that any statements Galloway made to a law enforcement officer could not be considered unless it first “determine[d] beyond a reasonable doubt that [he] made the statements voluntarily” and that it was then to “give such weight to [his] statement as [it felt] [the statement] deserved under all the circumstances.” *See* A.R.S. § 13-3988(A).

Substantial evidence supported findings of all elements necessary for Galloway's convictions under either of these theories. *See* A.R.S. §§ 13-301, 13-303, 13-603, 13-604, 13-1203, 13-1204, 13-1304, 13-1507, 13-1508, 13-1902, 13-1903, and 13-1904; *see also State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980) (substantial evidence is that which "reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt"). Furthermore, the sentences imposed by the trial court were within the statutory ranges authorized by § 13-603. We have found no error, much less error that can be characterized as fundamental, and therefore affirm the judgment of convictions and sentences imposed.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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PHILIP G. ESPINOSA, Judge